

No. 10764

United States
Circuit Court of Appeals
For the Ninth Circuit. 5

THE APACHE LAND AND CATTLE COM-
PANY, a corporation,

Appellant,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

JUL - 15 1944

PAUL P. O'BRIEN,
CLERK

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THE APACHE LAND AND CATTLE COM-
PANY, a corporation,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

ARMSTRONG, KRAMER, MORRISON &
ROCHE

First National Bank Building,
Phoenix, Arizona.

GUY AXLINE

Holbrook, Arizona.

Attorneys for Plaintiff.

FENNEMORE, CRAIG, ALLEN & BLEDSOE

Phoenix National Bank Bldg.,
Phoenix, Arizona.

Attorneys for Defendants. [1*]

In the Superior Court of the State of Arizona In
and For the County of Apache.

No. 2323

Civ-67 Pret.

THE APACHE LAND AND CATTLE COM-
PANY, a Corporation,

Plaintiff,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation; JOHN DOE, JANE
DOE and DOE-ROE Company, a Corporation;
and all the Heirs, Unknown Heirs, Executors,
Administrators, Successors-in-Interest or As-
signs of any of the Above Named Parties,
Defendants.

COMPLAINT

Comes now the Plaintiff, The Apache Land and
Cattle Company, a Corporation, and complains and
alleges as follows:

I.

That Plaintiff, The Apache Land and Cattle Com-
pany, is a Corporation organized and existing under
and by virtue of the laws of the State of Colorado,
and is now, and has been during the times here-
inafter mentioned, duly authorized to transact busi-
ness within the State of Arizona;

That the Defendant, The Franklin Life Insur-
ance Company, is a corporation organized and ex-

isting under and by virtue of the laws of the State of Illinois;

That the true names of John Doe, Jane Doe and Doe-Roe Company, a Corporation, their Heirs and Successor-in-Interest, are unknown to this Plaintiff; and should any of them appear in this action as parties-defendant, this Plaintiff requests permission to substitute their true names.

II.

That Plaintiff is the owner in fee simple of the following described real property:—situate in the County of Apache, [2] State of Arizona:

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21) and Twenty-three (23), All in Township Seventeen (17) North, Range Twenty-five (25) East;

Sections One (1), Three (3), Five (5), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-three (33) and Thirty-five (35), all in Township Eighteen (18) North, Range Twenty-five (25) East;

All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic & Pacific Railroad, to-wit:

Sections One (1), Eleven (11), Thirteen (13), Fifteen (15), Twenty-one (21), Twenty-three (23),

Twenty-five (25), Twenty-seven (27), Thirty-three (33), and Thirty-five, all in Township Nineteen (19), North, Range Twenty-five (25) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), and Twenty-three (23), all in Township Seventeen (17) North, Range Twenty-six (26) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35); all in Township Eighteen (18) North, Range Twenty-six (26) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35), all in Township Nineteen (19) North, Range Twenty-six (26) East;

All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the west and south of the right of way of the Atlantic and Pacific Railroad, in Township Twenty (20), Range Twenty-six (26) East, to-wit: Sections Twenty-three (23), Twenty-five (25), Twenty-seven (27), Thirty-one (31), Thirty-three (33), and Thirty-five (35), in

Township Twenty (20) North, Range Twenty-six (26) East;

The West One-half of Section Twenty-six (26), Township Twenty (20) North, Range Twenty-six (26) East, 320 acres, (This land is known as the land purchased [3] from Ferdinand V. Barber and Mary A. Barber, and known as the Barber Homestead).

The West one-half of the Southwest Quarter and South one-half of the Northwest Quarter of Section Twelve (12), Township Nineteen (19) North Range Twenty-five (25) East, 160 acres. (This land is known as the Loy C. Turbeville homestead.)

The Southwest Quarter of the Northwest Quarter of Section Thirty-four (34), Township Eighteen (18) North, Range Twenty-six (26) East, 40 acres. (This land is known as the James E. Porter Railroad Land Strip.)

That fractional part of the North half of the Northeast Quarter; the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section Twenty-eight (28), Township Twenty (20) North, Range Twenty-six (26) East of the G. & S. R. M., lying South and East of the Atchison, Topeka and Santa Fe Railroad Company's right of way (and containing 40 acres, more or less);

Together with all appurtenances thereto and improvements thereon, and with all rights to the use of water and easements for the carriage of water for use in irrigating said premises.

III.

That the Plaintiff is credibly informed and believes, and therefore alleges the fact to be, that the Defendants above named, and each of them, make some claim in and to the above described real property adverse to this Plaintiff;

That the claims of the Defendants, and each of them, are without right; and that Defendants, and each of them, have no right, title, claim and interest in or to the said real property hereinabove described, or any part thereof;

That Plaintiff's estate is derived from the United States of America and the State of Arizona, through its predecessors in interest.

Wherefore, Plaintiff prays judgment as follows:

1. That the Defendants, and each of them, be required to set forth the nature of their claims; and that all adverse claims be determined by a decree of this Court;

2. That by Judgment and Decree it be ordered, adjudged and [4] decreed that the Plaintiff is the owner in fee simple of the real property hereinabove described; and that its estate be established against the adverse claims of the Defendants, and each of them; that all of said Defendants be barred and forever estopped from having, or claiming, any right or title adverse to the Plaintiff in or to said premises, or any part thereof;

3. For such other and further relief as to the Court may seem just and proper.

ARMSTONG, KRAMER, MOR-
RISON & ROCHE

By J. E. MORRISON

First National Bank Build-
ing

Phoenix, Arizona.

GUY AXLINE

Holbrook, Arizona

Attorneys for Plaintiff.

State of Arizona,

County of Maricopa—ss.

Harry Jamison, being first duly sworn, on his oath deposes and says: That he is the President of the Apache Land and Cattle Company, Plaintiff in the foregoing and above entitled Cause, and makes this verification for and in its behalf; that he has read the foregoing Complaint and knows the contents thereof; that the matters and things therein alleged are true, both in substance and in fact, except as to those matters alleged on information and belief, and as to those matters he believes it to be true.

HARRY JAMISON

Subscribed and sworn to before me this 15th day of June, A. D. 1942.

(Notarial seal) GLADYS PERRY

Notary Public

My com. exp. Oct. 28, 1945. [5]

[Endorsed]: Filed Aug. 19, 1942. [6]

[Title of District Court and Cause.]

ANSWER OF THE FRANKLIN LIFE INSURANCE COMPANY, A CORPORATION

Comes now the defendant The Franklin Life Insurance Company, a corporation, and for its answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits the allegations of paragraph I of said complaint, except the allegations as to John Doe, Jane Doe and Doe-Roe Company, a corporation, and as to those allegations this answering defendant has no information and therefore denies the same;

II.

Denies the allegations of paragraph II of said complaint;

III.

Admits that this defendant makes claim in and to the real property described in plaintiff's complaint, and denies that the claim of this defendant is without right, and denies that this defendant has no right, title, claim and interest in and to the said real property as alleged in paragraph III of plaintiff's complaint; [7]

IV.

Denies each and every allegation of said complaint not herein specifically admitted;

V.

As and for an affirmative defense to plaintiff's complaint, this defendant alleges as follows:

(a) That this defendant is the owner in fee simple and in possession of the real estate described in plaintiff's complaint, and of each part and parcel thereof;

(b) That this defendant's title thereto was acquired in the following manner, to wit: That on or about July 1, 1930, plaintiff above named was the owner in fee simple of the property described in plaintiff's complaint, and being justly indebted to this defendant in the sum of one hundred forty thousand dollars (\$140,000.00) made, executed and delivered to this defendant its realty mortgage mortgaging the property described in plaintiff's complaint to secure the payment of said indebtedness; that thereafter and on or about the 19th day of February, 1938, payment of said indebtedness being in default, this defendant commenced an action for the foreclosure of said mortgage against plaintiff herein in the Superior Court of the State of Arizona, in and for the County of Apache, in which said action, pursuant to due and regular proceedings therefor, judgment of foreclosure and sale of the real estate described in plaintiff's complaint herein was duly and regularly entered on or about August 17, 1940, and pursuant to said judgment of foreclosure and sale the said real estate was thereafter duly and regularly sold under special execution by the Sheriff of Apache County to this defendant for the sum of one hundred and fifty thousand dollars (\$150,000.00), and thereafter and on or about the 12th day of April, 1941, no re-

demption from said Sheriff's sale having been made as required [8] by law, the said Sheriff of Apache County duly made, executed and delivered his Sheriff's Deed to said real estate to this defendant, and that this defendant thereupon became and ever since has been and now is the owner in fee simple and in possession of said real estate so sold to this defendant under foreclosure, being the real estate described in plaintiff's complaint herein;

VI.

That plaintiff has no right, title, claim or interest in or to the said real property described in plaintiff's complaint, or any part thereof.

Wherefore, having fully answered, this defendant prays that plaintiff's complaint be dismissed, for its costs herein incurred, and for such other and further relief as to the Court may seem just and proper.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE,

By RICHARD FENNEMORE

Attorneys for Defendant

The Franklin Life Insurance
Company, a corporation.

State of Arizona,
County of Maricopa—ss.

Richard Fennemore, being first duly sworn on his oath deposes and says:

That he is one of the attorneys for the defendant The Franklin Life Insurance Company, a corpora-

tion, and makes this affidavit for and on behalf of said defendant; that he has read plaintiff's complaint and knows the contents thereof, and has read the foregoing answer and knows the contents thereof; that the matters and things alleged in plaintiff's complaint which are denied in said answer are untrue, and that the matters and things alleged in the foregoing answer are true except as to matters [9] alleged on information and belief, and as to those matters he believes said answer to be true.

RICHARD FENNEMORE

Subscribed and sworn to before me this 21st day of August, 1942.

[Seal]

ELAINE JONES

Notary Public.

My commission expires: August 5, 1944.

Received copy of the above Answer this 24 day of August, 1942.

GUY AXLINE

ARMSTRONG, KRAMER, MOR-
RISON & ROCHE,

By J. E. MORRISON,

Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 24, 1942. [10]

[Title of District Court and Cause.]

REPLY TO ANSWER OF THE FRANKLIN
LIFE INSURANCE COMPANY, A CORPO-
RATION

Comes now the plaintiff The Apache Land and Cattle Company, a corporation, and, leave of Court having been first had and obtained, files this its reply to the answer of the defendant, The Franklin Life Insurance Company, a corporation, on file herein, and alleges:

I.

That the defendant The Franklin Life Insurance Company is a foreign corporation organized under and by virtue of the laws of the State of Illinois.

II.

That at all of the times and dates specified and referred to in the fifth paragraph of said defendant's answer, and for many years thereafter down to May 28, 1941, the defendant The Franklin Life Insurance Company, a foreign corporation as aforesaid, had wholly failed to qualify to do business in the State of Arizona as required by the statute in such case made and provided.

III.

That at all of the times and dates specified and referred [11] to in said Paragraph V of defendant's answer, and for a long time thereafter, the said defendant was engaged in an enterprise of permanence and durability in the State of Arizona

and did transact within the State of Arizona a substantial part of its ordinary business, and therefore each and all of the acts of the defendant, The Franklin Life Insurance Company, set up in the complaint were and are wholly void.

Wherefore, plaintiff prays judgment that it be ordered, adjudged and decreed that plaintiff, The Apache Land and Cattle Company, is the owner in fee simple of all the real estate described in its complaint, and that the defendants have no claims whatsoever adverse to the title of the plaintiff, and that said answering defendant be barred and forever estopped from having or claiming any right, title or interest adverse to the plaintiff in and to the said premises or any part thereof.

GUY AXLINE,

Holbrook, Ariz.

ARMSTRONG, KRAMER,

MORRISON & ROCHE,

J. E. MORRISON,

First National Bank Bldg.,

Phoenix, Ariz.

Attorneys for Plaintiff.

Received Copy July 6, 1943.

FENNEMORE, CRAIG, ALLEN

& BLEDSOE,

Attorneys for defendant.

[Endorsed]: Filed July 6, 1943. [12]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant The Franklin Life Insurance Company, a corporation, being the only defendant who has been served with process in the above-entitled action, and moves for a Summary Judgment in its favor upon plaintiff's complaint upon the ground that there is no genuine issue as to any material fact and that this defendant is entitled to said Judgment as a matter of law.

This motion is made upon the pleadings on file and upon the following documents herewith presented:

1. Certified copy of Judgment and Decree.
2. Certified copy of Sheriff's Certificate of Sale of real estate.
3. Certified copy of Execution and Order of Sale.
4. Certified copy of Sheriff's Return of Execution and Order of Sale of real property.
5. Verified copy of Sheriff's Deed, the original of which will be produced upon the hearing on this motion. [13]

Each of said documents being in that certain action heretofore filed in the Superior Court of Apache County, State of Arizona, numbered therein, No. 2065, in which The Franklin Life Insurance Company, a corporation, this defendant, was plaintiff, and The Apache Land and Cattle Company, a corporation, plaintiff above named, was defendant.

Dated, October 27, 1943.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE,

By RICHARD FENNEMORE,
202 Phoenix National Bank
Bldg., Phoenix, Arizona.
Attorneys for defendant, The
Franklin Life Insurance
Company, a corporation.

Received copy of the within Motion for Summary
Judgment this 27th day of October, 1943.

ARMSTRONG, KRAMER,
MORRISON & ROCHE,
GUY AXLINE,

By J. E. MORRISON,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 27, 1943. [14]

50050

1.

In the Superior Court
Of Apache County, State of Arizona

CLERK'S CERTIFICATE OF COURT
RECORD

State of Arizona,
County of Apache,—ss.

I, Myrlan G. Brown, Clerk of the Superior Court
of the State of Arizona, in and for the County of
Apache, do hereby certify that the attached and

foregoing is a true and correct Copy of the Original Judgment and Decree, Civil No. 2065 as the same appears of record in my office, and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of this Court this day of, 19.....

[Seal]

MYRLAN G. BROWN,

Clerk of said Superior Court.

[Endorsed]: Filed. Walter S. Wilson, Clerk,
by Ernest R. Morris, Deputy. Dec. 30, 1941. [15]

In the Superior Court of the State of Arizona,
in and for the County of Apache

No. 2065

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation,

Plaintiff,

vs.

THE APACHE LAND AND CATTLE COM-
PANY, a Corporation,

Defendant.

JUDGMENT AND DECREE

Now on this 17th day of August, 1940, comes the above named plaintiff by its attorneys Henry H. Clark of Denver, Colorado, and Earl Platt of St.

Johns, Arizona, and prays the court for relief as follows:

(1) That judgment be forthwith entered in the above entitled action in favor of the plaintiff, and against the defendant in the total sum of Two Hundred Twenty Five Thousand Dollars (\$225,000.00), plus the costs as taxed in this case; (2) for a decree ordering the sale of the mortgaged lands and premises hereinafter described under foreclosure proceedings; and (3) for such other and further relief in the premises as to the court may seem meet and proper.

And it appearing to the court from the records and files in said action as follows, to-wit:

1. That said plaintiff filed its complaint therein against the above named defendant on the 19th day of February, 1938, wherein it prayed for judgment against defendant on certain promissory notes dated July 1, 1930, and for subsequent money advancements, in the total principal sum of \$150,820.77, together with interest thereon at the rate of seven per cent (7%) per [16] annum from the date of said notes, and from the dates of said several money advancements to defendant, and for the allowance by the court of a reasonable attorney's fee for services rendered in these foreclosure proceedings, and for other relief as set forth in said complaint;

2. That given to secure the payment of said indebtedness of said defendant under date of July 1st, 1930, was a certain mortgage on the lands and premises situated in the County of Apache, Arizona,

as specifically described in "Exhibit A" attached to said complaint, and as hereinafter set forth;

3. That since the filing of said complaint the plaintiff has made certain other money advancements to defendant, or to others for its use and benefit, for the payment of taxes on the mortgaged premises and for other necessary and proper items of expense in the total net sum of \$6,563.43, making the total net sum of all such money advancements \$17,384.20 as set forth in plaintiff's supplemental complaint filed herein;

4. That under date of February 21, 1938, a summons was issued by the Clerk of this Court in the above entitled action, and that under date of March 10, 1938, said defendant by endorsement thereon acknowledged and accepted service of the same, and that no appearance has been entered therein by said defendant, or any pleading filed in its behalf, excepting only a "Confession of Judgment" for the total principal sum of \$225,000.00, dated July 6, 1940, and wherein it is stipulated and agreed that upon the entry of a judgment for the said sum the court may also enter an order and decree directing the sale of said mortgaged lands and premises as under foreclosure, in accordance with the laws of the State of Arizona, and the application of the proceeds thereof to the satisfaction, as far as possible, of said indebtedness after the payment of all proper costs and charges arising in connection with said sale and the costs of said action.

Now, Therefore, the Court Doth Find as Follows, To-wit: (1) That all of the allegations and averments contained in the complaint and in the supplemental complaint are true; (2) that defendant is indebted to plaintiff in the total agreed sum as aforesaid of \$225,000.00, and that plaintiff is entitled to have judgment entered in said action for said sum; (3) that plaintiff is entitled to an order and decree directing the sale of the mortgaged lands and premises described in said complaint, and the application of the proceeds, as far as possible, to the satisfaction of the judgment to be entered upon said indebtedness.

It Is Therefore Ordered, Adjudged and Decreed as Follows:

1. That plaintiff do have and recover of defendant the sum of \$225,000.00, with costs of this action, and that judgment therefor be forthwith entered herein;

2. That the said mortgaged lands and premises be sold at public auction in accordance with the laws of the State of Arizona and the proceeds thereof applied to the satisfaction, as far as possible, of said judgment, after the payment of all proper costs and charges arising in connection with said sale and the costs of this action;

3. That a special execution be forthwith issued to the sheriff of Apache County, directing him to seize and sell at public auction the said lands and premises under execution for the purposes aforesaid, and that such sale be conducted by the sheriff at the front door of the Court House of said county

on Monday, the 7th day of October, 1940, pursuant to the laws of the State of Arizona, to the highest and best bidder therefor;

4. That notice of sale so ordered as aforesaid shall be made by posting a notice thereof in three public places in said Apache County, one of which shall be at the Court House door, for not less than fifteen days successively before the date of sale, and by publishing a copy thereof for three weeks before such date [18] in a newspaper of general circulation published in said county, which notice shall state the judgment entered and the amount thereof, and the court in which it was rendered, and the name of the parties to said action, and shall particularly describe the lands and premises to be sold as aforesaid, and as hereinafter specified.

5. That upon the conclusion of such sale said sheriff shall issue his certificate of purchase to said highest and best bidder for the same, who has paid cash therefor, and upon the expiration of six months from the date of said sale said sheriff shall execute and deliver to such purchaser, or his assigns, his deed therefor, provided that in the meantime defendant has not redeemed said lands and premises from such sale by paying the amount bid at said sale, plus interest at the legal rate to the person or persons entitled to the same, or to the plaintiff herein, if plaintiff at said sale bids the same in its own behalf, and applies the amount of its bid as a credit on said judgment; that upon the expiration of said period of redemption, and if said defendant has not redeemed the same the said

purchaser or the plaintiff, as the case may be, shall be entitled to the immediate possession of all of said lands and premises, and unless such possession is promptly yielded by defendant to plaintiff, or its assigns, upon demand, the court shall thereupon order the issuance of a writ of possession placing the purchaser, or its assigns, or the plaintiff, as the case may be, in possession thereof;

6. That said sheriff shall apply the proceeds of said sale, first: In payment of the costs of said sale and of this action; second: In payment to plaintiff of the amount found to be due it in the aforesaid judgment; and third: the residue if any there be, shall be paid over to said defendant, or its assigns.

7. That from and after the sale of said lands and premises, under and by virtue of this judgment and decree, said defendant, and all persons claiming under said defendant since the [19] commencement of this action be, and they and each of them are, hereby forever barred and foreclosed of and from all lien upon, right, title, interest or estate of, in or to said lands and premises, or any part thereof, except only as to the exercise of the right of redemption hereinbefore referred to.

8. That the lands and premises to be sold as aforesaid are described as follows:

(a) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Tp. 17 N, R. 25 East;

(b) Sections 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29, 33, and 35, all in Tp. 18 N, R. 25 East;

(c) All of odd numbered sections and parts of

odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic and Pacific Railroad, to-wit: Sections 1, 11, 13, 15, 21, 23, 25, 27, 33, and 35, all in Tp. 19 N, R. 25 East;

(d) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Tp. 17 N, R. 26 East;

(e) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Tp. 17 N, R. 26 East;

(f) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, all in Tp. 19 N, R. 26 East;

(g) All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the right of way of the Atlantic and Pacific Railroad, in Tp. 20, R. 26 East, to-wit: Sections 23, 25, 27, 31, 33, and 35, Tp. 20 N, R. 26 East;

(h) The west one-half of Section 26, Tp. 20 N, R. 26 East;

(i) The west one-half of the SW $\frac{1}{4}$ and south one-half of the NW $\frac{1}{4}$ of Section 12, Tp. 19 N, R. 25 East;

(j) The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Tp. 18 N, R. 26 East;

(k) That fractional part of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$; the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 28, Tp. 20 N, R. 26 East of the G. & S. R. M. lying south and east of the Atchison and Topeka and Santa Fe Railroad Company's right of way, containing 40 acres, more or less;

(1) Also all appurtenances thereto and improvements thereon, together with all rights to the use of water and easements for the carriage of water for use in irrigating said lands and premises, and also all shares of stock and shares of water and water rights, in any ditch or irrigation [20] company or water users' association which may in any manner now or hereafter entitle the owner of said premises to water for irrigating same.

* * * * *

Done in Open Court.

By the Court.

LEVI S. UDALL,

Judge. [21]

50050

2.

In the Superior Court of the State of Arizona,
in and for the County of Apache

No. 2065

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation,

Plaintiff,

vs.

THE APACHE LAND AND CATTLE COM-
PANY, a Corporation,

Defendant.

SHERIFF'S CERTIFICATE OF SALE OF
REAL ESTATE

I, John Nunn, Sheriff of the County of Apache, State of Arizona, do hereby certify that under and by virtue of an Execution and Order of Sale issued in the above entitled cause, duly attested the 28th day of August, 1940, by which I was commanded to make the amount of Two Hundred Twenty-five Thousand Dollars (\$225,000.00) to satisfy the Judgment in this action, together with Plaintiff's costs and accruing costs out of the real property belonging to the above named Defendant and set forth and described in said Execution and Order of Sale, I have on this day sold at public auction, according to the statute in such case made and provided, to The Franklin Life Insurance Company who was the highest and best bidder therefor, for the sum of One Hundred and Fifty Thousand Dollars

(\$150,000.00), which was the whole sum bid by said Company, as being in full satisfaction of said Judgment, the real property set forth in said Execution and Order of Sale, and particularly described as follows, to-wit:

(a) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Twp. 17 N., R. 25 East;

(b) Sections 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29, 33, and 35, all in Twp. 18 N., R. 25 East;

(c) All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic and Pacific Railroad, to-wit: Sections 1, 11, 13, 15, 21, 23, 25, 27, 33, and 35, all in Twp. 19 N. R. 25 East; [22]

(d) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Twp. 17 N., R. 26 East;

(e) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, all in Twp. 18 N. R. 26 East;

(f) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, all in Twp. 19 N. R. 26 East;

(g) All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Right of way of the Atlantic and Pacific Railroad, in Twp. 20, R. 26 East, to-wit: Sections 23, 25, 27, 31, 33, and 35, Twp. 20 N. R. 26 East;

(h) The west one-half of Section 26, Twp. 20 N., R. 26 East;

(i) The west one-half of the SW $\frac{1}{4}$ and south one-half of the NW $\frac{1}{4}$ of Section 12, Twp. 19 N. R. 25 East;

(j) The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Twp. 18 N., R. 26 East;

(k) That fractional part of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$; the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 28, Twp. 20 N., R. 26 East of the G. & S. R. M. lying south and east of the Atchison and Topeka and Santa Fe Railroad Company's right of way, containing 40 acres, more or less;

(l) Also all appurtenances thereto and improvements thereon, together with all rights to the use of water and easements for the carriage of water for use in irrigating said lands and premises, and also all shares of stock and shares of water and water rights, in any ditch or irrigation company or water users' association which may in any manner now or hereafter entitle the owner of said premises to water for irrigating same.

And I further certify that I offered for sale the above described real property as a whole, that being the manner in which the judgment debtor directed that the same be sold.

And that said real property is subject to redemption in lawful money of the United States of America pursuant to the statute in such cases made and provided.

Given under my hand this 7th day of October,
A. D. 1940.

JOHN NUNN,
Sheriff.

By
Deputy Sheriff. [23]

State of Arizona

County of Apache,—ss.

I, Joyce U. Colter, County Recorder of Apache County, Arizona, do hereby certify that the foregoing instrument is a full, true and correct copy of the Sheriffs Certificate of sale of Real Estate executed by John Nunn, Sheriff of Apache County in favor of The Franklin Life Insurance Company and recorded Jan. 15th, 1941, in Book 4 of N. A. R. E. at Page 498, Records of Apache County, Arizona.

Witness my hand and Official Seal this 25 day
of September, 1941.

[Seal] JOYCE U. COLTER,
County Recorder.

[Endorsed]: Filed Walter S. Wilson, Clerk, by
Ernest R. Morris, Deputy, Dec. 30, 1941. [24]

50050

3.

In the Superior Court
Of Apache County, State of Arizona

State of Arizona,
County of Apache,—ss.

CLERK'S CERTIFICATE OF COURT
RECORD

I, Myrlan G. Brown, Clerk of the Superior Court of the State of Arizona, in and for the County of Apache, do hereby certify that the attached and foregoing is a true and correct Copy of the Original Execution and Order of Sale, Civil No. 2065 as the same appears of record in my office, and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of this Court this 25 day of Sept., 1941.

[Seal]

MYRLAN G. BROWN,

Clerk of said Superior Court.

[Endorsed]: Filed. Walter S. Wilson, Clerk,
by Ernest R. Morris, Deputy, Dec. 30, 1941. [25]

In the Superior Court of the State of Arizona,
in and for the County of Apache

No. 2065

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation,

Plaintiff,

vs.

THE APACHE LAND AND CATTLE COM-
PANY, a Corporation,

Defendants.

EXECUTION AND ORDER OF SALE

The State of Arizona, to the Sheriff or Any Con-
stable of Apache County, Arizona, Greetings:

Whereas, on the 17th day of August, 1940, The Franklin Life Insurance Company, a corporation, recovered a Judgment in the Superior Court of Apache County, State of Arizona, against The Apache Land and Cattle Company, a corporation, for the principal sum of \$150,820.77, which included money subsequently advanced, together with interest thereon at the rate of 7% per annum from the date of the execution of said notes, and from the dates of the several advancements to the Defendant, and for reasonable attorneys fees for services rendered in the foreclosure proceedings, all in the total sum of Two Hundred Twenty-five Thousand Dollars (\$225,000.00), together with Plaintiff's costs of suit and all accruing costs, including costs

of sale, together with a foreclosure of Plaintiff's Mortgage lien against the Defendant upon the following described premises, to-wit:

(a) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Township 17 North, Range 25 East;

(b) Sections 1, 3, 5, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 33, and 35, all in Tp. 18 N. R. 25 East;

(c) All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic and Pacific Railroad, to-wit: Sections 1, 11, 13, 15, 21, 23, [26] 25, 27, 33, and 35, all in Tp. 19 N, R. 25 East;

(d) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Tp. 17 N, R. 26 East;

(e) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 all in Tp. 19 N, R. 26 East;

(f) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 all in Tp. 19 N, R. 26 East;

(g) All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the right of way of the Atlantic and Pacific Railroad, in Tp. 20, R. 26 East, to-wit: Sections 23, 25, 27, 31, 33, and 35, Tp. 20 N, R. 26 East;

(h) The west one-half of Section 26, Tp. 20 N.

(i) The west one-half of the SW $\frac{1}{4}$ and south

one-half of the NW $\frac{1}{4}$ of Section 12, Tp. 19 N. R. 25 East;

(j) The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Tp. 18 N, R. 26 East;

(k) That fractional part of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$; the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 28, Tp. 20 N, R. 26 East of the G. & S. R. M. lying south and east of the Atchison and Topeka and Santa Fe Railroad Company's right of way, containing 40 acres, more or less;

(l) Also all appurtenances thereto and improvements thereon, together with all rights to the use of water and easements for the carriage of water for use in irrigating said lands and premises, and also all shares of stock and shares of water and water rights, in any ditch or irrigation company or water users' association which may in any manner now or hereafter entitle the owner of said premises to water for irrigating same.

Wherein it was decreed that said property be sold as under execution in satisfaction of said Judgment.

Therefore, you are hereby commanded to seize the above described property and sell the same as under execution, and that you apply the proceeds thereof to the payment and satisfaction of said Judgment, together with Plaintiff's costs of suit, together with accruing costs; and if said property shall sell for more than sufficient to pay off and satisfy said sum of money, then you are hereby directed to pay over the excess thereof to the Defendant, the Apache Land and Cattle Company.

Herein Fail Not, under the penalty of the law, but due return make hereof, showing how you have executed the same, within 30 days after receipt hereof, with what you have [27] done endorsed thereon.

Witness, Honorable Levi S. Udal, Judge of said Superior Court of Apache County, State of Arizona, at the Court House in said County of Apache, State of Arizona, this 28th day of August, 1940.

Attest my hand and the seal of said Court, the day and year last above written.

MYRLAN G. BROWN,

Clerk of the Superior Court
of Apache County, Arizona.

By
Deputy Clerk. [28]

50050

4.

In the Superior Court
Of Apache County, State of Arizona
State of Arizona,
County of Apache—ss.

CLERK'S CERTIFICATE OF COURT
RECORD

I, Myrlan G. Brown, Clerk of the Superior Court of the State of Arizona, in and for the County of Apache, do hereby certify that the attached and foregoing is a true and correct Copy of the Original

Sheriff's Return of Execution and Order of Sale Real Property, Civil No. 2065 as the same appears of record in my office, and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of this Court this 25 day of Sept. 1941.

[Seal]

MYRLAN G. BROWN

Clerk of said Superior Court

[Endorsed]: Filed. Walter S. Wilson, Clerk.
By Ernest R. Morris, Deputy. Dec. 30, 1944. [29]

In the Superior Court of the State of Arizona,
In and For the County of Apache

No. 2065

THE FRANKLIN LIFE INSURANCE COM-
PANY, a corporation,

Plaintiff,

vs.

THE APACHE LAND AND CATTLE COM-
PANY, a corporation,

Defendant.

SHERIFF'S RETURN OF EXECUTION AND
ORDER OF SALE OF REAL PROPERTY

State of Arizona,
County of Apache—ss.

I, John Nunn, Sheriff of the County of Apache,
State of Arizona, do hereby certify:

That under and by virtue and in pursuance of the annexed Writ of Execution and Order of Sale, I noticed for sale all of the property therein described and more particularly hereinafter described, in satisfaction of said Judgment as required by law and the mandate of said writ:

(a) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Township 17 North, Range 25 East;

(b) Sections 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29, 33, and 35, all in Twp. 18 N. R. 25 East;

(c) All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic and Pacific Railroad, to-wit: Sections 1, 11, 13, 15, 21, 23, 25, 27, 33, and 35, all in Twp. 19 N. R. 25 East;

(d) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, all in Twp. 17 N., R. 26 East;

(e) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 all in Twp. 19 N. R. 26 East;

(f) Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 all in Twp. 19 N. R. 26 East;

(g) All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the right of way of the [30] Atlantic and Pacific Railroad, in Twp. 20, R. 26 East, to wit: Sections 23, 25, 27, 31, 33, and 35, Twp. 20 N. R. 26 East;

(h) The west one-half of Sections 26, Twp. 20 N. R. 26 East;

(i) The west one-half of the SW $\frac{1}{4}$ and south one-half of the NW $\frac{1}{4}$ of Section 12, Twp. 19 N., R. 25 East;

(j) The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, 18 N., R. 26 East;

(k) That fractional part of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$; the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 28; Twp. 20 N. R. 26 East of the G. & S. R. M. lying South and East of the Atchison and Topeka and Santa Fe Railroad Company's right of way, containing 40 acres, more or less;

(l) Also all appurtenances thereto and improvements thereon, together with all rights to the use of water and easements for the carriage of water for use in irrigating said lands and premises, and also all shares of stock and shares of water and water rights, in any ditch or irrigation company or water users' association which may in any manner now or hereafter entitled the owner of said premises to water for irrigating same.

That in pursuance to said execution and order of sale, I caused to be published a notice of sale of the above described property once each week for four successive weeks next before said sale in the Apache County Independent-News, a weekly publication of general circulation, published in said County of Apache, State of Arizona, and posted notices of said sale in three public places in said County for four successive weeks next before said sale. One of said

notices being posted at the door of the County Court House of said County and State.

That on the 7th day of October, 1940 at the hour of 3:30 o'clock p.m. at the door of the Court House of said County, in St. Johns, Apache County, Arizona, the property mentioned, set forth and fully described in said Execution and Order of Sale was duly offered for sale at public auction in satisfaction of said Judgment, pursuant to said notice and said writ. And at said sale of all of the said property so described therein, said premises were duly struck off by me and sold to the Franklin Life Insurance Company for the Total sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), said corporation being the highest [31] bidder and said amount being the highest sum bid. Said sum so bid and received being bid in satisfaction of said Judgment and costs in said cause, this execution and order of sale is now returned fully satisfied.

That I have made and delivered to the said purchaser the legal certificate of sale, and have filed for record with the County Recorder of said Apache County, Arizona, a true copy of or duplicate of said certificate.

That receipt of Plaintiff's attorney in full satisfaction of said Judgment is attached hereto and made a part of this return.

Dated this 7th day of October, A. D. 1940.

/s/ JOHN NUNN

Sheriff

State of Arizona,
County of Apache—ss.

This receipt is to acknowledge to John Nunn, Sheriff of Apache County, Arizona, satisfaction in full of the Judgment and costs in the foregoing Execution and Order of Sale, said sum being the amount bid for the property this day sold at Sheriff's sale in full satisfaction of said Judgment, and said sum so bid being evidenced and represented by the Certificate of Sale issued to the purchaser of said property, who is also the Judgment creditor.

Dated this 7th day of October, 1940.

/s/ HENRY H. CLARK

EARL PLATT

Attorneys for Plaintiff [32]

50050

5.

SHERIFF'S DEED

FROM

JOHN NUNN, Sheriff of the County of Apache,

To

THE FRANKLIN LIFE INSURANCE
COMPANY

Dated, April 12, 1941.

SHERIFF'S DEED

This Indenture, Made the 12th day of April, A.D. 1941, between John Nunn, Sheriff of the County

of Apache, State of Arizona, the party of the first part, and The Franklin Life Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, the party of the second part,

Witnesseth, Whereas, in and by a certain judgment and Decree, made and entered by the Superior Court of Apache County, State of Arizona, on or about the 17th day of August, 1940, in a certain action then pending in said Court, wherein said The Franklin Life Insurance Company was plaintiff, and The Apache Land and Cattle Company, a corporation organized and existing under and by virtue of the laws of the State of Colorado, was defendant, it was, among other things, ordered, adjudged and decreed that all and singular the mortgaged premises described in the complaint in said action, and specifically described in said judgment and decree should be sold at public auction by the Sheriff of the said County of Apache in the manner required by law.

And Whereas, in accordance with said judgment and decree, an order of sale was, on or about the 28th day of August, 1940, issued and delivered to the said Sheriff commanding him to [33] seize the premises described in said judgment and decree and sell the same as under execution, and apply the proceeds of said sale toward the satisfaction of said judgment, and make return thereof within thirty days; and, whereas, pursuant to said order of sale to him directed and delivered, the said Sheriff duly levied on the premises mentioned in said judgment

and decree and hereinafter described and, agreeably to said judgment and decree and the provisions of law, did, at the hour of 3:30 o'clock P.M., on the 7th day of October, 1940, after due public notice had been given as required by the laws of this State and the course and practice of said Court, sell said premises at public auction at the door of the Court House in the city of St. Johns, in said county of Apache; at which sale the said premises mentioned in said judgment and decree, and hereafter described, were fairly struck off to the highest bidder therefor, to-wit, the said The Franklin Life Insurance Company, the said party of the second part, for the sum of One hundred and fifty thousand Dollars, (\$150,000.00), that being the highest sum bid for the same.

And Whereas, the said party of the second part thereupon directed the said Sheriff to accept said bid in full satisfaction of the judgment for \$225,000.00, and costs, theretofore entered in favor of the plaintiff in the above entitled action, the party of the second part herein, and to make his return of execution accordingly.

And Whereas, the said Sheriff thereupon made and issued the usual certificate in the duplicate of the said sale in due form of law, and delivered one thereof to the said purchaser and caused the other to be filed in the office of the County Recorder of said Apache County, and thereafter made, and filed in the Superior Court of said County, in the above entitled [34] action, his return of execution wherein

he recited that said bid was accepted as aforesaid in full satisfaction of said judgment.

And Whereas, more than six months have elapsed since the date of said sale, and no redemption has been made of the premises so sold as aforesaid, by or on behalf of the said judgment debtor, said The Apache Land and Cattle Company, or by or on behalf of any other person. And no notice of intention to redeem having been given by any lien holder, creditor or other person entitled to redeem, as provided by law.

Now, This Indenture Witnesseth: That the said party of the first part, the said Sheriff, in order to carry into effect the sale so made by him as aforesaid, in pursuance of said judgment and decree and in conformity to the Statute in such case made and provided, and also in consideration of the premises and of the said sum of \$150,000.00 so bid as aforesaid by the said purchaser, the said party of the second part herein, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces, or parcels of land situate, lying and being in the said County of Apache, State of Arizona, bounded and particularly described as follows, to-wit:

(a) Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), and Twenty-three (23), all in Township Seventeen (17), North, Range Twenty-five (25) East;

(b) Sections One (1), Three (3), Five (5), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-three (33), and Thirty-five (35), all in Township Eighteen (18) North, Range Twenty-five (25) East;

(c) All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puereo of the West and South [35] of the Southern limit of the right of way of the Atlantic and Pacific Railroad, to-wit: Sections One (1), Eleven (11), Thirteen (13), Fifteen (15), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Thirty-three (33), and Thirty-five (35), all in Township Nineteen (19) North, Range Twenty-five (25) East;

(d) Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21) and Twenty-three (23), all in Township Seventeen (17), North, Range Twenty-six (26), East;

(e) Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35), all in Township Eighteen (18) North, Range Twenty-six (26) East;

(f) Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen

(15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35), all in Township Nineteen (19) North, Range Twenty-six (26) East;

(g) All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the right of way of the Atlantic and Pacific Railroad, in Township Twenty (20) North, Range Twenty-six (26) East, to-wit: Sections Twenty-three (23), Twenty-five (25), Twenty-seven (27), Thirty-one (31), Thirty-three (33), and Thirty-five (35), Township Twenty (20) North, Range Twenty-six (26) East;

(h) The West One-half of Section Twenty-six (26), Township Twenty (20), North, Range Twenty-six (26) East;

(i) The West One-half of the Southwest quarter and South One-half of the Northwest Quarter of Section Twelve (12), Township Nineteen (19), North, Range Twenty-five (25) East;

(j) The Southwest Quarter of Northwest Quarter of Section Thirty-four (34), Township Eighteen (18) North, Range Twenty-six (26) East;

(k) That fractional part of the North half of the Northeast Quarter; the southeast quarter of the northeast quarter and the northeast quarter of the northwest quarter of Section Twenty-eight (28), Township Twenty (20) North, Range Twenty-six

(26) East of the G. & S. R. M., lying south and east of the Atchison and Topeka and Santa Fe Railroad Company's right of way, and containing 40 acres, more or less; [36]

(1) Also all appurtenances thereto and improvements thereon, together with all rights to the use of water and easements for the carriage of water for use in irrigating said lands and premises, and also all shares of stock and shares of water and water rights, in any ditch or irrigation company or water users' association which may in any manner now or hereafter entitle the owner of said premises to water for irrigating same.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the revision and revisions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold all and singular the said premises hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

In Witness Whereof, the said party of the first part of these presents has hereunto set his hand and seal, the day and year first above written.

[Seal]

JOHN NUNN

Sheriff of Apache County,
Arizona.

Signed, Sealed and Delivered in the presence of
EMILIO GARCIA.

State of Arizona

County of Apache—ss.

On the 12th day of April, 1941, personally appeared the above named John Nunn, Sheriff of the County of Apache, State of Arizona, known to me to be the person described in and whose name is subscribed to the above and foregoing instrument, and he, the said John Nunn, acknowledged to me that he, as such Sheriff, executed the same for the uses, purposes and considerations therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal at my office in the County of Apache, [37] State of Arizona, the day and year in this Certificate first above written.

EARL PLATT

Notary Public.

My Commission expires March 14, 1943.

State of Arizona

County of Maricopa—ss.

Richard Fennemore, being first duly sworn, upon his oath deposes and says:

That he is one of the attorneys for The Franklin Life Insurance Company and as such attorney has examined the Sheriff's Deed from John Nunn, Sheriff of the County of Apache, to The Franklin Life Insurance Company, dated April 12, 1941;

That the attached copy is a true and correct copy of the original deed.

RICHARD FENNEMORE

Subscribed and sworn to before me this 27th day
of October, 1943.

[Seal] LUETTA C. BRADFORD
Notary Public

My Commission Expires: Aug. 12, 1945.

Filed and recorded at the request of Earl Platt,
April 12th, 1941 at 3 P.M. in Book of Deeds No. 26,
at page 266, Records of Apache County, Arizona.

[Seal] JOYCE U. COLTER
County Recorder

[Endorsed]: Filed Jan. 10, 1942. Walter S.
Wilson, Clerk. By L. H. Buck, Deputy. [38]

In the United States District Court
For the District of Arizona.

October 1943 Term At Phoenix

Wednesday, January 26, 1944
(Minutes Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

Civ-67-Prescott.

[Title of Cause.]

It Is Ordered that the motion of the defendant
The Franklin Life Insurance Company, a corpora-
tion, for summary judgment be and it is granted.

[39]

In the District Court of the United States
For the District of Arizona

No. Civ. 67 Prc.

THE APACHE LAND AND CATTLE COM-
PANY, a corporation,

Plaintiff,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a corporation; JOHN DOE, JANE
DOE and DOE-ROE COMPANY, a corpora-
tion; and all the Heirs, Unknown Heirs, Ex-
ecutors, Administrators, Successors-in-Interest
or assigns of any of the Above Named Parties,
Defendants.

SUMMARY JUDGMENT

This cause came on to be heard upon motion of The Franklin Life Insurance Company, a corporation, for Summary Judgment, and was submitted upon said motion, the pleadings on file, and the documents presented with said motion, and therefore, upon consideration thereof, It Is Ordered, Adjudged and Decreed that plaintiff The Apache Land and Cattle Company, a corporation, has no right, title or interest in or to the following described lands situate in Apache County, Arizona, all townships and ranges being based upon the Gila & Salt River Base and Meridian, to wit:

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), and Twenty-three (23), all in Township Seventeen (17) North, Range Twenty-five (25) East;

Sections One (1), Three (3), Five (5), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-three (33), and Thirty-five (35), all in Township Eighteen (18) North, Range Twenty-five (25) East; [40]

All of odd numbered sections and parts of odd numbered sections lying south and east of the thread of the stream of the Rio Puerco of the West and South of the Southern limit of the right of way of the Atlantic & Pacific Railroad, to-wit:

Sections One (1), Eleven (11), Thirteen (13), Fifteen (15), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Thirty-three (33), and Thirty-five, all in Township Nineteen (19) North, Range Twenty-five (25) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), and Twenty-three (23), all in Township Seventeen (17) North, Range Twenty-six (26) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-

seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35); all in Township Eighteen (18) North, Range Twenty-six (26) East;

Sections One (1), Three (3), Five (5), Seven (7), Nine (9), Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (7), Twenty-nine (29), Thirty-one (31), Thirty-three (33), and Thirty-five (35), all in Township Nineteen (19) North, Range Twenty-six (26) East;

All of the odd numbered sections and parts of sections lying south and east of the thread of the stream of the Rio Puerco of the west and south of the right of way of the Atlantic and Pacific Railroad, in Township Twenty (20), Range Twenty-six (26) East, to-wit:

Sections Twenty-three (23), Twenty-five (25), Twenty-seven (27), Thirty-one (31), Thirty-three (33), and Thirty-five (35), in Township Twenty (20) North, Range Twenty-six (26) East;

The West One-half of Section Twenty-six (26), Township Twenty (20) North, Range Twenty-six (26) East, 320 acres, (This land is known as the land purchased from Ferdinand V. Barber and Mary A. Barber, and known as the Barber Homestead);

The West one-half of the Southwest Quarter and South one-half of the Northwest Quarter of Section Twelve (12), Township Nineteen (19) North, Range Twenty-five (25) East, 160 acres. (This

land is known as the Loy C. Turbeville homestead);

The Southwest Quarter of the Northwest Quarter of Section Thirty-four (34), Township Eighteen (18) North, Range Twenty-six (26) East, 40 acres. (This land is known as the James E. Porter Railroad Land Strip.) [41]

That fractional part of the North half of the Northeast Quarter; the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section Twenty-eight (28), Township Twenty (20) North, Range Twenty-six (26) East, lying South and East of the Atchison, Topeka and Santa Fe Railroad Company's right of way (and containing 40 acres, more or less);

Together with all appurtenances thereto and improvements thereon, and with all rights to the use of water and easements for the carriage of water for use in irrigating said premises;

and that defendant recover its costs herein incurred, hereby taxed at \$40.00.

Form Approved:

GUY AXLINE 2/3/44

ARMSTRONG, KRAMER, MOR-
RISON & ROCHE

GUY AXLINE

By ARMSTRONG, KRAMER, MOR-
RISON & ROCHE

Attorneys for Plaintiff

[Endorsed]: Defendant's Proposed Form of Summary Judgment. Filed Feb. 3, 1944. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gertrude I. Bitting, Deputy Clerk.

[Endorsed]: Deft's Judgment. Filed Feb. 8, 1944. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gertrude I. Bitting, Deputy Clerk. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that The Apache Land and Cattle Company, plaintiff in the foregoing entitled action, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit,

from the final judgment entered in this action on February 8, 1944.

KRAMER, MORRISON, ROCHE
& PERRY

J. E. MORRISON

309 1st Nat'l Bank Bldg.,

Phoenix, Ariz.

Attorneys for Plaintiff

Received copy of the within document this 3rd day of April, 1944.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE

Attorney for Defendants

[Endorsed]: Filed Apr. 3, 1944. [43]

[Title of District Court and Cause.]

DEPOSIT OF CASH BOND

Comes now The Apache Land and Cattle Company, a corporation, plaintiff herein, and deposits with the Clerk of this Court the sum of Two Hundred Fifty Dollars (\$250.00) as a cash bond on this appeal.

KRAMER, MORRISON, ROCHE
& PERRY

J. E. MORRISON

309 First National Bk. Bldg.,

Phoenix, Arizona

Attorneys for Plaintiff

Received copy of the within document this 3rd day of April, 1944.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE

Attorney for Defendants

[Endorsed]: Filed Apr. 3, 1944. [44]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To Edward W. Scruggs, Clerk of the United States
District Court for the District of Arizona:

The portions of the record and proceedings to be contained in the record on appeal in this case are hereby designated as follows:

(1) Complaint

(2) Answer

(3) Reply

(4) Motion for Summary Judgment

(5) Order Sustaining Motion for Summary
Judgment

(6) Judgment

(7) This Designation

(8) Certified copies of the following, all in the case of The Franklin Life Insurance Company, plaintiff, vs. The Apache Land and

Cattle Company, No. 2065, Apache County,
Arizona:

- (a) Sheriff's Certificate of Sale of Real
Estate
- (b) Execution and Order of Sale
- (c) Sheriff's Return Execution and Order
of Sale

(9) Notice of Appeal

(10) Plaintiff's deposit of Cash Bond.

KRAMER, MORRISON, ROCHE
& PERRY

J. E. MORRISON

309 First Natl. Bk. Bldg.,
Phoenix, Ariz.

Attorneys for Plaintiff [45]

Received copy of the within document this 10th
day of April, 1944.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE

By EARLY CRAIG

Attorney for Defendants

[Endorsed]: Filed Apr. 10, 1944. [46]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF ADDI-
TIONAL CONTENTS OF RECORD ON
APPEAL

To Edward W. Scruggs, Clerk of the United States
District Court for the District of Arizona:

The Franklin Life Insurance Company, a cor-
poration, one of the defendants above-named hereby

designates the following additional portions of the record and proceedings to be contained in the record on appeal in this case:

- (1) Certified copy of Judgment and Decree
- (2) Verified copy of Sheriff's Deed

both of said documents being in that certain action in the Superior Court of Apache County, State of Arizona, numbered therein 2065, in which The Franklin Life Insurance Company, a corporation, was plaintiff and The Apache Land and Cattle Company, a corporation, was defendant, and both of said documents being exhibits to defendant's Motion for Summary Judgment heretofore filed in the above entitled matter.

(3) This Designation.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE

By RICHARD FENNEMORE

Attorneys for Defendant The
Franklin Life Insurance
Company [47]

Received copy of the foregoing Designation this
19th day of April, 1944.

KRAMER, MORRISON, ROCHE
& PERRY

By J. E. MORRISON

Attorneys for Plaintiff

[Endorsed]: Filed Apr. 19, 1944. [48]

In the United States District Court for the
District of Arizona

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said court, including the records, papers and files in the case of The Apache Land and Cattle Company, a corporation, plaintiff, versus The Franklin Life Insurance Company, a corporation; John Doe, Jane Doe and Doe-Roe Company, a corporation; and all the Heirs, Unknown Heirs, Executors, Administrators, Successors-in-Interest or assigns of any of the Above Named Parties, defendants, numbered Civ-67 Prescott, on the docket of said court.

I further certify that the attached pages, numbered 1 to 49, inclusive, contain a full, true and correct transcript of all the proceedings had in said cause and of all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Plaintiff's Designation of Contents of Record on Appeal, and Defendant's Designation of Additional Contents of Record on Appeal, filed therein and made a part of the transcript attached hereto, as the same appear from the originals of record remaining on file in my office as such clerk in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fees for preparing and certifying this said transcript of record

amounts to the sum of \$15.95 and that sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said court at Phoenix, Arizona, this 4 day of May, 1944.

[Seal] EDWARD W. SCRUGGS,

Clerk

By CATHERINE A. DOUGHERTY

Deputy Clerk [49]

[Endorsed]: No. 10764. United States Circuit Court of Appeals for the Ninth Circuit. The Apache Land and Cattle Company, a corporation, Appellant, vs. The Franklin Life Insurance Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed May 8, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10764

THE APACHE LAND AND CATTLE COM-
PANY, a corporation,

Appellant,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a corporation, et al,

Appellees.

APPELLANT'S STATEMENT OF POINTS

Notwithstanding the fact that the appellant herein did not plead the lack of qualification of appellee The Franklin Life Insurance Company under the laws of the State of Arizona in case No. 2065 in the Superior Court of the State of Arizona in and for the County of Apache, it has the right to plead the same in this cause, and the judgment in the said Apache County case is not res judicata of this action for the following reasons:

(1) That the lack of qualification is a matter of public policy of the state.

(2) That neither the appellant nor anyone else can waive the same.

(3) That it is one of the matters that can be raised at any time in any action.

(4) That it is the duty of any court upon facts coming to its attention showing such disqualifica-

tion, to immediately declare any and all acts of such foreign corporation wholly void.

KRAMER, MORRISON, ROCHE
& PERRY

J. E. MORRISON

First Natl. Bank Bldg.,

Phoenix, Arizona

GUY AXLINE

Holbrook, Arizona

Attorneys for Appellant

We hereby designate the entire transcript for printing.

KRAMER, MORRISON, ROCHE
& PERRY

J. E. MORRISON

First Natl. Bank Bldg.,

Phoenix, Arizona

J. E. MORRISON

Holbrook, Arizona

Attorneys for Appellant

Received copy of the within document this 15th day of May, 1944.

FENNEMORE, CRAIG, ALLEN
& BLEDSOE

Attorneys for Appellee

[Endorsed]: Filed May 16, 1944. Paul P. O'Brien, Clerk.